

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

STATE OF WASHINGTON,

Respondent,

v.

NOAH J. L. THOMAS,

Appellant.

No. 39227-5-II

UNPUBLISHED OPINION

Penoyar, J.— Noah J. L. Thomas entered an *Alford*<sup>1</sup> plea of guilty to homicide by abuse and stipulated that he (1) knew the 3-year-old victim, Kekoa, was particularly vulnerable and (2) used his position of trust to facilitate the commission of the crime. Consistent with the State’s recommendations, the trial court imposed an exceptional sentence of 600 months and prohibited Thomas from having contact with any minor children, including his own biological children. Thomas appeals the duration of his sentence, arguing that it is clearly excessive. In his statement of additional grounds (SAG), Thomas asks us to reinstate his right to visit with his children. Concluding that the trial court did not abuse its discretion in either regard, we affirm.<sup>2</sup>

A trial court may impose a sentence outside the standard sentencing range if it finds that substantial and compelling reasons justify an exceptional sentence. Former RCW 9.94A.535 (2007). We review the duration of an exceptional sentence for an abuse of discretion. *State v. Law*, 154 Wn.2d 85, 93, 110 P.3d 717 (2005). “The practical effect of this standard is to

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<sup>1</sup> *North Carolina v. Alford*, 400 U.S. 25, 91 S. Ct. 160, 27 L. Ed. 2d 162 (1970).

<sup>2</sup> A commissioner of this court initially considered Thomas’s appeal as a motion on the merits under RAP 18.14 and then transferred it to a panel of judges.

guarantee that an appellate court will ‘rarely, if ever’ overturn an exceptional sentence because of its length.” *State v. Clinton*, 48 Wn. App. 671, 678, 741 P.2d 52 (1987) (quoting *State v. Armstrong*, 106 Wn.2d 547, 553, 723 P.2d 1111 (1986) (Goodloe, J., dissenting)).

Thomas argues that because he only stipulated to two aggravating factors, his exceptional sentence of 600 months is clearly excessive. In support of that argument, Thomas discusses a number of cases in which long exceptional sentences were imposed, some of which had more aggravating factors. But those cases either do not address the length of the defendant’s exceptional sentence (*State v. Womac*, 160 Wn.2d 643, 160 P.3d 40 (2007) (addressing only double jeopardy doctrine); and *State v. Berube*, 150 Wn.2d 498, 79 P.3d 1144 (2003) (addressing factual basis to support imposition of exceptional sentence)) or affirm the imposition of an exceptional sentence longer than Thomas’s (*State v. Russell*, 69 Wn. App. 237, 848 P.2d 743 (1993) (affirming as not clearly excessive exceptional sentence of 828 months imprisonment following defendant’s conviction for homicide by abuse with five aggravating factors); and *State v. Creekmore*, 55 Wn. App. 852, 783 P.2d 1068 (1989) (affirming as not clearly excessive exceptional sentence of 720 months imprisonment following conviction for second degree felony murder).

In addition to stipulating to two aggravating factors, Thomas acknowledged the following facts supporting his guilty plea to homicide by abuse. When Kekoa’s mother brought Kekoa to the emergency room, the doctor determined that he had been dead for some time. Thomas, Kekoa’s mother’s boyfriend, had been babysitting Kekoa that day. Thomas eventually admitted that he had been frustrated with Kekoa because he would not walk on his own, would not eat lunch, and “acted like an asshole.” Clerk’s Papers (CP) at 4. Thomas told police that, after a trip

to the park, he threw Kekoa on the loveseat and later “snatched him up” and threw him across the room and onto his bed, which had a metal frame. CP at 4. Kekoa hit the metal frame and bounced onto the floor. Thereafter, Kekoa became unresponsive and began bleeding from the mouth. Thomas tried to wake Kekoa by shaking him hard and wrapping both hands around his neck, choking him. An autopsy revealed that Kekoa suffered blunt force trauma to the front and back of his head and a massively swollen brain. He also suffered a blunt impact to his abdomen, which compressed his abdominal wall to his spine, injuring his internal organs. CP at 4. Finally, peticheal hemorrhages in Kekoa’s eyes evidenced strangulation.

The facts here do not present the rare case in which we will overturn an exceptional sentence because of its duration. The trial court did not abuse its discretion when it sentenced Thomas to 600 months in prison.

In his SAG, Thomas asks us to reverse the portion of the trial court’s sentence prohibiting him from having contact with his biological children.<sup>3</sup> We review the imposition of crime-related prohibitions for abuse of discretion. *State v. Warren*, 165 Wn.2d 17, 32, 195 P.3d 940 (2008) (citing *State v. Riley*, 121 Wn.2d 22, 37, 846 P.2d 1365 (1993)), *cert. denied*, 129 S. Ct. 2007 (2009). The trial court abuses its discretion when its decision is manifestly unreasonable or exercised on untenable grounds or for untenable reasons.

A parent’s fundamental right to parent can be restricted by a condition of a criminal sentence if the condition is reasonably necessary to prevent harm to the children. *State v. Ancira*,

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<sup>3</sup> The record on appeal contains little evidence regarding the present circumstances of Thomas’s children. Kekoa’s mother stated that she and Thomas have one child together and the Department of Social and Health Services removed the child from her care.

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107 Wn. App. 650, 654, 27 P.3d 1246 (2001) (citing *State v. Letourneau*, 100 Wn. App. 424, 439, 997 P.2d 436 (2000)). Thomas stipulated to his criminal record, which included two prior convictions for third degree assault of a child. Based on that criminal record, as well as the facts described above, the trial court did not abuse its discretion when it determined that prohibiting Thomas's contact with his own children was reasonably necessary to prevent harm to them.

We affirm.

A majority of the panel has determined that this opinion will not be printed in the Washington Appellate Reports but it will be filed for public record. RCW 2.06.040.

Penoyar, C.J.

We concur:

Armstrong, J.

Van Deren, J.